

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

----- x  
ADONNA FROMETA,

Index No.: 16270/07

Plaintiff,

-against-

MARIO E. DIAZ-DIAZ, ALL AMERICAN HAULERS  
RECYCLING,

**NOTICE OF REMOVAL**

Defendants-Petitioners.  
----- X

**PLEASE TAKE NOTICE** that the within Notice of Removal was filed with the Clerk of  
the United States District Court, Southern District of New York, on July 12, 2007.

Dated: New York, New York  
July 12, 2007

Yours etc.,

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP

By: 

JOHN A. HSU

Attorneys for Defendants

MARIO E. DIAZ-DIAZ and ALL AMERICAN  
HAULERS RECYCLING

150 East 42nd Street

New York, New York 10017-5639

(212) 490-3000

File No. : 01502.00009

To: Dinkes & Schwitzer  
Attorney for Plaintiffs  
112 Madison Avenue  
New York, New 10016

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ADONNA FROMETA,

Plaintiff,

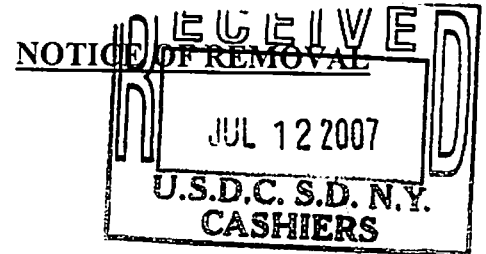
-against-

MARIO E. DIAZ-DIAZ, ALL AMERICAN HAULERS  
RECYCLING,

Defendants-Petitioners.

**JUDGE BAER**  
**07 CIV 6372**

Civil Action No.:



----- X  
TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

Defendants-Petitioners, MARIO E. DIAZ-DIAZ. and ALL AMERICAN HAULERS  
RECYCLING file this notice to remove the foregoing case to the United States District Court for  
the Southern District of New York, New York division, and respectfully show this Court:

1. A civil action was commenced in the Supreme Court of the State of New York,  
County of Bronx in which the above-named individual, ADONNA FROMETA is the plaintiff  
and the petitioners are the defendants. The action is entitled Adonna Frometa v. Mario E. Diaz-  
Diaz and All American Haulers Recycling and bears Index Number 16270/07.

2. This is a civil action seeking damages arising out of a motor vehicle accident  
allegedly caused by the petitioners' negligence. The plaintiff alleges personal injuries. The  
addendum demands an amount which exceeds the jurisdictional limits of all lower Courts.  
Accordingly, the amount in controversy in this suit is in excess, exclusive of interest and costs,  
of \$75,000.

3. This action involves a controversy between a citizen of the State of New York, a citizen of the State of New Jersey and a New Jersey LLC in that: (a) the plaintiff Adonna Frometa is now, and was at the time said action was commenced, a resident and domiciliary of the State of New York residing at 666 East 23<sup>rd</sup> Street, Bronx, New York (b) petitioner Mario E. Diaz-Diaz was at the time of the accident and remains a citizen of the State of New Jersey residing at 91 Spring Street, Passaic, NJ, 07055 and (c) defendant All American Haulers Recycling was at the time of this accident and remains a New Jersey LLC with its principal place of business at 65 Liberty Street, Passaic, NJ, 07055

4. The above action was commenced against defendants-petitioners on or after June 13, 2007.

5. No proceedings have occurred in the state court action, and the defendants have not yet appeared in that action.

6. Said action is one of which the District Courts of the United States have original jurisdiction under 28 U.S.C. § 1332 and 28 U.S.C. § 1441. There is complete diversity of citizenship between the plaintiff Adonna Frometa and the defendants.

7. Defendants Mario E. Diaz-Diaz and All American Haulers Recycling are the petitioners for the removal of this case to this Court.

8. Defendants have been served with the Summons and Complaint on June 22, 2007. Accordingly, this motion is timely.

9. Written filing of this motion will be given to the plaintiff promptly after the filing of this motion, as is required by law.

10. A true and correct copy of this motion will be filed with the Clerk of the Supreme Court of the State of New York, Bronx County promptly after the filing of this motion, as is required by law.

11. Attached to this motion, and by reference made a part hereof, are true and correct copies of all process, pleadings and orders filed in the aforesaid action.

12. By filing this Notice of Removal, petitioners do not waive any defense which may be available to them, specifically including, but not limited to, their right to contest in personam jurisdiction over the petitioners, improper service of process upon the petitioners, and the absence of venue in this Court or in the court from which the action has been removed.

WHEREFORE, petitioners pray that this action proceed in this Court as an action properly removed thereto.

Dated: New York, New York  
July 12, 2007

Yours etc.,

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP

By:

  
JOHN A. HSU (JH-6425)

Attorneys for Defendants-Petitioners

MARIO E. DIAZ-DIAZ and ALL AMERICAN  
HAULERS RECYCLING

150 East 42nd Street

New York, New York 10017-5639

(212) 490-3000

01502.00009

To: Dinkes & Schwitzer  
Attorney for Plaintiffs  
112 Madison Avenue  
New York, New York 10016

JUL-10-2007 TUE 08:49 AM John A. Rocco Co. Inc.

FAX NO. 9735141000

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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX**

**ADONNA FROMETA**

**Plaintiff(s)**

**- against -**

**MARIO E. DIAZ-DIAZ, ETANO**

**Defendant(s)**

**Index # 16270/07**

**Invoice Number: 442059**

**File #: SRDS07-028SP**

**Notice Pursuant  
to Section 253  
of the Vehicle  
& Traffic Law  
of the State of  
New York**

Please take notice that a copy of the within summons and complaint along with the statutory fee of \$10 was served upon the Secretary of State of New York pursuant to Section 253 of the Vehicle and Traffic Law on June 22, 2007 at the office at 123 William Street, New York, New York 10038.

**Dated June 29, 2007**

**New York, New York**

**DINKES & SCHWITZER, ESQS.**

**112 MADISON AVENUE**

**NEW YORK, NY 10016**

**ATTORNEY FOR PLAINTIFF**

**(212) 683-3800**

JUL-10-2007 TUE 08:48 AM John A. Rocco Co. Inc.

FAX NO. 9735141000

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

ADONNA FROMETA,

Index No.: 16270-07  
Date of Purchase:

Plaintiff,

SUMMONS

-against-

Plaintiff designates  
BRONX  
County as place of trial  
The basis of venue is:  
Plaintiff's Residence  
666 East 23<sup>rd</sup> Street  
Bronx, NY

MARIO E. DIAZ-DIAZ, ALL AMERICAN  
HAULERS RECYCLING,

Defendant.

To the above named defendant(s):

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the Plaintiff's Attorneys within 20 days after the service of this summons exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York), and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded herein.

Dated: New York, New York  
May 31, 2007

DINKES & SCHWITZER, P.C.  
BY: 

WILLIAM R. HAMEL, ESQ.  
Attorneys for Plaintiffs  
Address and Telephone Number  
112 Madison Avenue  
New York, N.Y. 10016  
(212) 685-7800  
File No. SRDS07-0288P

Defendants Address:  
MARIO E. DIAZ-DIAZ  
91 Spring Street  
Passaic, N.J. 07055

ALL AMERICAN HAULERS RECYCLING.  
65 Liberty Street  
Passaic, NJ 07055

This Summons and Complaint is being Served pursuant to  
New York State Vehicle and Traffic Law § 253

RECEIVED

JUN 13 PM 12:47  
CLERK  
COUNTY OF  
BRONX

JUL-10-2007 TUE 08:42 AM John A. Rocco Co. Inc.

FAX NO. 9735141000

P. 06

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

===== X  
ADONNA FROMETA,

Plaintiff,

-against-

MARIO E. DIAZ-DIAZ, ALL AMERICAN  
HAULERS RECYCLING,

Defendants.

===== X

Plaintiff, ADONNA FROMETA, by his attorneys, DINKES &  
SCHWITZER, P.C., complaining of the defendant herein, respectfully  
shows to this court and alleges as follows:

1. That at all times hereinafter alleged, the plaintiff,  
ADONNA FROMETA, was a resident of the County of Bronx, City and  
State of New York.

2. That at all times hereinafter alleged, ADONNA FROMETA,  
operated a motor vehicle bearing New York registration number  
DMF4956.

3. That at all times hereinafter alleged, ADONNA FROMETA,  
owned a motor vehicle bearing New York registration number  
DMF4956.

4. That at all the times hereinafter alleged, and upon  
information and belief, the defendant, ALL AMERICAN HAULERS

Date of Purchase: 6/13/07  
Index No.: 16270/07  
VERIFIED COMPLAINT

JUL-10-2007 TUE 08:48 AM John A. Rocco Co. Inc.

FAX NO. 8735141000

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RECYCLING., was and still is a domestic corporation organized and existing under and by virtue of the laws of the State of New Jersey.

5. That at all the times hereinafter alleged, and upon information and belief, the defendant, ALL AMERICAN HAULERS RECYCLING., was and still is a foreign corporation authorized to do business under and by virtue of the laws of the State of New Jersey.

6. That at all the times hereinafter alleged, and upon information and belief, the defendant, ALL AMERICAN HAULERS RECYCLING., was a company organized and existing under and by virtue of the laws of the State of New Jersey.

7. That at all of the times hereinafter mentioned, and upon information and belief, the defendant, ALL AMERICAN HAULERS RECYCLING., maintained a principal place of business in the City of Passaic and State of New Jersey.

8. That at all times hereinafter alleged, and upon information and belief, the defendant, ALL AMERICAN HAULERS RECYCLING., owned a motor vehicle bearing New Jersey registration number AJ780H.

9. That at all the times hereinafter alleged, and upon information and belief, the defendant, MARIO E. DIAZ-DIAZ,



JUL-13-2007 TUE 08:48 AM John A. Rocco Co. Inc.

FAX NO. 973541000

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operated a motor vehicle bearing New Jersey registration number AJ780H.

10. That at all times hereinafter alleged, and upon information and belief, the defendant, MARIO E. DIAZ-DIAZ, maintained the motor vehicle bearing New Jersey registration number AJ780H.

11. That at all times hereinafter alleged, and upon information and belief, the defendant, MARIO E. DIAZ-DIAZ, managed the motor vehicle bearing New Jersey registration number AJ780H.

12. That at all times hereinafter alleged, and upon information and belief, the defendant, MARIO E. DIAZ-DIAZ, controlled the motor vehicle bearing New Jersey registration number AJ780H.

13. That at all times hereinafter alleged, and upon information and belief, the defendant, MARIO E. DIAZ-DIAZ, operated a motor vehicle bearing New Jersey registration number AJ780H with the knowledge, permission and consent of defendant ALL AMERICAN HAULERS RECYCLING.

14. That at all times hereinafter alleged, and upon information and belief, the defendant, MARIO E. DIAZ-DIAZ, maintained a motor vehicle bearing New Jersey registration number AJ780H with the knowledge, permission and consent of defendant ALL

JUL-10-2007 TUE 03:49 AM John A. Rocco Co. Inc.

FAX NO. 9735141000

F. 09

**AMERICAN HAULERS RECYCLING.**

15. That at all times hereinafter alleged, and upon information and belief, the defendant, **MARIO E. DIAZ-DIAZ**, managed a motor vehicle bearing New Jersey registration number **AJ780H** with the knowledge, permission and consent of defendant **ALL AMERICAN HAULERS RECYCLING**.

16. That at all times hereinafter alleged, and upon information and belief, the defendant, **MARIO E. DIAZ-DIAZ**, controlled a motor vehicle bearing New Jersey registration number **AJ780H** with the knowledge, permission and consent of defendant **ALL AMERICAN HAULERS RECYCLING**.

17. That at all of the times hereinafter mentioned, East 23<sup>rd</sup> Street at or near its intersection with Lexington Avenue, in the County of New York, City and State of New York, was and still is a public highway used extensively by the public in general.

18. That on February 14, 2007, at the aforesaid location, the aforesaid motor vehicles came in contact one with the other.

19. That the aforesaid accident and injuries resulting therefrom were due solely and wholly as a result of the careless and negligent manner in which the defendants owned, operated, maintained, managed and controlled their motor vehicle without this plaintiff in any way contributing thereto.

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FAX NO. 9735141000

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20. That by reason of the foregoing and the negligence of the defendants, the plaintiff ~~ADONNA FROMETA~~, was severely injured, bruised and wounded, suffered, still suffers and will continue to suffer for some time physical pain and bodily injuries and became sick, sore, lame and disabled and so remained for a considerable length of time.

21. That by reason of the foregoing, the plaintiff, ~~ADONNA FROMETA~~, was compelled to and did necessarily require medical aid and attention, and did necessarily pay and become liable therefor for medicines and upon information and belief, the plaintiff will necessarily incur similar expenses.

22. That by reason of the foregoing, the plaintiff, ~~ADONNA FROMETA~~, has been unable to attend to her usual occupation in the manner required.

23. That by reason of the wrongful, negligent and unlawful actions of the defendants, as aforesaid, the plaintiff, ~~ADONNA FROMETA~~, sustained serious injuries as defined in Section 5102 (d) of the Insurance Law of the State of New York, and has sustained economic loss greater than basic economic loss as defined in Section 5102 of the said Insurance Law.

24. That one or more of the exceptions of §1602 of the Civil Practice Law and Rules applies to the within action.

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25. That as a result of the foregoing, the plaintiff, ADONNA PROMETA, sustained damages in an amount that exceeds the jurisdictional limits of the lower Courts.

WHEREFORE, plaintiff demands judgment against the defendant in an amount that exceeds the jurisdictional limits of the lower Courts, all together with the costs and disbursements of this action.

Dated: New York, New York  
May 31, 2007

DINKES & SCHWITZER, P.C.

BY: 

WILLIAM R. HAMEL, ESQ.  
Attorneys for Plaintiffs  
112 Madison Avenue  
New York, N.Y. 10016  
(212) 685-7800  
File No.: SRDS07-028SP

JUL-10-2007 TUE 02:49 AM John A. Recco Co. Inc.

FAX NO. 9735141000

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STATE OF NEW YORK )  
 ) SS  
COUNTY OF NEW YORK )

I, the undersigned, an attorney admitted to practice in the courts of New York State, state under penalty of perjury that I am one of the attorneys for the plaintiff(s) in the within action; I have read the foregoing ~~SUBPOENA~~ AND COMPLAINT and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe to be true. The reason this verification is made by me and not by my client(s), is that my client(s) are not presently in the County where I maintain my offices. The grounds of my belief as to all matters not stated upon my own knowledge are the materials in my file and the investigations conducted by my office.

Dated: New York, New York  
May 31, 2007

  
\_\_\_\_\_  
WILLIAM R. HODEL